



U.S. Department of Justice

United States Attorney  
Southern District of New York

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*The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007*

October 7, 2015

**BY ECF AND HAND DELIVERY**

The Honorable Thomas P. Griesa  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

**Re: *United States v. Prevezon Holdings, Ltd., et al.*, 13 Civ. 6326 (TPG)**

Dear Judge Griesa,

The Government writes to respond briefly to the defendants' unauthorized surreply opposing amendment of the complaint, Docket Item ("D.I.") 362. Notably, the defendants' surreply essentially concedes that the main premise of their argument opposing amendment is wrong.

Defendants opposed amendment principally based on the incorrect claim that the proposed second amended complaint first put at issue the mental states of the senders of the Bunicon and Elenast funds. *See* D.I. 348 at 10. As the Government explained, this is flatly incorrect, as the original complaint's conspiracy allegations required proof of a meeting of the minds, which necessarily entails proof of the coconspirators' mental states. *See* D.I. 360 at 3. Defendants now effectively concede, as they must, that the mental states of their alleged coconspirators have always been at issue, saying instead that this was irrelevant before since the defendants could have focused their defense on a *different* element of the case, their own knowledge. *See* D.I. 362 at 2 ("[W]hether Bunicon or Elenast knew property was stolen was irrelevant so long as Defendants did not have an actionable *scienter*."). But of course the same is true now. Under the new specified unlawful activity as well as the old, the defendants need not contest the mental states of the senders of the money if they can defeat other elements of the government's case or establish affirmative defenses, such as their own innocent mental states.

The defendants' best attempt to demonstrate prejudice thus shows the opposite. The essential facts at issue in the proposed second amended complaint are the same as those that have always been at issue, and no additional discovery is required.

Accordingly, the Government respectfully requests leave to file its proposed second amended complaint.

Respectfully submitted,

PREET BHARARA  
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cc: Counsel of Record (by ECF)